January 25. 1765.

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REPLIES

FOR

Sir *Michael Stewart* of *Blackhall*, Baronet, and *William Cuningham* of *Craigends*, Esq;

TO

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The ANSWERS for the Magistrates and Town-council of the Burgh of *Paisley*, and their Delegate.

THE Novelty of the Question at Issue between the above-named Parties, with respect to the Town of *Paisley*'s Qualification to stand upon the Roll of Freeholders for the County of *Renfrew*, rather than any seeming Difficulty therein, has induced the Complainers to give your Lordships the Trouble of this short Reply.

The Respondents candidly admit, that the Statute-laws respecting Elections, and more particularly those of later Years, from the 1681 downwards, are adapted to the common Case of Freeholders intitled to that Character in their own proper Right.

But they observe, that in none of these Statutes is there any Proviso with regard to Freehold-estates belonging to Bodies politic and corporate; and that this may have proceeded from the Rarity of such Freehold-estates, which were either altogether unknown, or did seldom occur: And therefore, as the Town of

Paiſley ſtands confeſſedly poſſeſſed of all the Qualifications required by Law, to conſtitute ſuch a Freehold as intitles to a Voice in the Election of a Member to Parliament; and as there is no Law which *in terminis* incapacitates Bodies corporate from the Enjoyment of that Right, they are humbly of Opinion, that the ſame ought not to be denied them.

And in ſupport of this general Propoſition, they plead the Authority of two Judgments of the Parliament of *Scotland*; one of them in the Caſe of this very Borough in 1703, from which Period downwards the Town of *Paiſley*'s Delegate has been admitted and allowed of as a conſtituent Member in all Elections, and other Meetings of the Freeholders, without any Objection, though upon different Occaſions the Elections of that County have been diſputed with great Animoſity.

3*dly*, They inſiſt, that whatever Doubts might have ariſen upon this abſtract Queſtion, were they now *in petitorio;* yet as the Delegate for *Paiſley* ſtood upon the Roll of Freeholders for this County, when the Act of the 16th of the King paſſed into a Law, whereby Liberty was granted for any Freeholder to object to the Title of any Perſon ſtanding upon the Roll, by a ſummary Complaint, to be preferred to your Lordſhips between and the 1ſt of *December* 1743; under this expreſs Declaration, That if no ſuch Complaint ſhall be exhibited within the Time preſcribed, then, and in that Caſe, no Freeholder then ſtanding upon the Roll ſhall be thereafter ſtruck off, but upon ſufficient Objections ariſing from the Alteration of that Right or Title in reſpect of which he was inrolled; and as in Fact no Complaint againſt the Delegate for *Paiſley* was preſented within the Time limited, or was not properly preſented; and as no Alteration in the Town of *Paiſley*'s Qualification ſince that Period can be alledged, it is now too late to object.

The Complainers ſubmit it to your Lordſhips, from the Words, as well as from the Spirit of the whole Laws reſpecting this Matter, from the earlieſt Period down to this Day, that by

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by the Word *Freeholder*, and which is frequently expreſſed by the Word *Perſon* as ſynonymous, Bodies politic and corporate did not fall under the Purview of theſe Laws, which uniformly ſpeak of a ſingle Perſon as poſſeſſed of the Qualification required by Law to intitle to this Privilege.

And if it is true, as the Reſpondent ſays, that in ancient Times there were few, if any Examples, in this Country, of Bodies politic being poſſeſſed of ſuch Freehold-qualifications, this is the ſtrongeſt Argument for denying them a Privilege which, in the Nature of Things, they were not intitled to, and which the Law has not given them in expreſs Words.

And though the later Statutes, formed with greater Accuracy of Expreſſion, may more clearly evidence, that Bodies politic and corporate were not underſtood to be intitled to this Privilege; this is no Alteration of the Law, which was the ſame from the Beginning.

No Perſon is intitled to a Voice in the Election of a Commiſſioner to Parliament, but who is equally intitled to be elected; and as a Body corporate is incapable of the one, it cannot be intitled to the other.

The two Caſes referred to as decided in the Parliament of *Scotland*, can give no Support to the Town of *Paiſley*'s Plea. That of the Maſter of the Trinity-hoſpital in 1681 is not marked as a Judgment or Deciſion, but as a ſimple Reſolution, that the Maſter of the Hoſpital, who was perſonally infeft in a Forty Shilling Land holden of the King, *may have* a Vote in the Election of Commiſſioners to Parliament. How far this Reſolution would have been repeated in any ſimilar Caſe, either by your Lordſhips or the Parliament of *Scotland*, may juſtly be doubted: But it may ſafely be affirmed, that if the Election-laws had ſtood then as they do now, requiring both Property and Poſſeſſion in the Claimant, no Regard could have been had to ſuch a Qualification. But be that as it will, it is nothing to the Caſe in hand, where the Feoffee is the Town of *Paiſley*,

not any individual Perſon; and that the Community pretends to act by a Delegate or Commiſſioner. This would be ſo much contrary to the whole Spirit of the Election-laws, that it cannot be liſtened to.

The other Deciſion, 1703, in the Caſe of the Town of *Paiſley*, appears to have been ſlurred over, without giving any Attention to it. For though the Objection is ſaid to have been once ſtated, and that the Houſe of Parliament had acquieſced to ſuſtain the ſame; it is ſaid, with the ſame Breath, that the Objection was paſſed from, and allowed to be withdrawn.

Neither can the Reſpondents take Shelter under the above-recited Clauſe of the 16th of the King, authoriſing ſummary Complaints to this Court any Time before the 1ſt of *December* 1743, againſt any Perſon then ſtanding upon the Roll, with a Proviſo, That if no ſuch Complaint ſhould be exhibited within the Time limited, the Perſon ſtanding upon the Roll ſhould be continued thereon until an Alteration of his Circumſtances happened. There is nothing either expreſſed or implied in the Words of this Clauſe that can, by any fair Conſtruction, comprehend Bodies politic or corporate. The Party to be objected to is deſcribed by the Word *Perſon*; and if not complained of within the Time limited, he is not thereafter to be ſtruck off, but upon ſome Alteration of that Right or Title in reſpect of which *he* was inrolled.

The Law had no Idea of ſo abſurd a Thing as a Body-corporate ſtanding upon the Roll of Freeholders of any County; though, if that Conſtruction could be taken, it would not avail, for this plain Reaſon, that as the aforeſaid Proviſo does not operate beyond the Life of that Perſon who ſtands upon the Roll, if Bodies-corporate are to be put upon the ſame Footing with ſingle Perſons, as far as the Nature of Things will admit of, the Change of the Town's Delegate would fall to be conſidered as a Change of the Perſon.

But this Matter is not left to Argument or Conjecture; for in the

the very ſame Statute of the 16th of the King, reſpecting the Shire of *Sutherland*, it is *in terminis* enacted, with reſpect to the Qualification of Freeholders in that County, " That where " Lands are now holden of the King or Prince, by a Peer " or other Perſon, *or Body politic or corporate, who by Law are* " *diſabled to be a Member of the Houſe of Commons, or to vote in* "" *ſuch Elections*, in ſuch Caſe the Proprietor and Owner of " ſuch Lands, and not any of his Superiors, ſhall be intitled to " vote, or to be elected in reſpect of the ſame Lands."

This is at once deciſive of the Queſtion. It is a plain Declaration by King and Parliament, that Bodies politic and corporate have no Right or Title either to elect, or to be elected; but that they are by Law diſabled in both theſe Reſpects. And where that is the Caſe, it is humbly thought, your Lordſhips can have no Difficulty ſo to find; and, in conſequence thereof, to ordain the Town of *Paiſley*, and its Delegate, to be ſtruck off the Roll of Freeholders of this County.

In reſpect whereof, &c.

ALEX. LOCKHART.

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